

RESTRICTED

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ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE  
FIRST SESSION OF THE CONTRACTING PARTIES  
SUMMARY RECORD OF SEVENTH MEETING

Held at the Capitolio, Havana, Cuba,  
on 13 March 1948 at 6.00 p.m.

Consideration of Document GATT/1/21.

Mr. LEDDY (United States of America) introduced the following three proposals by his delegation:

1. Paragraph 6 of Article XXIX as set forth in the Protocol on supersession would be deleted and the proposal to include such a paragraph would be placed on the agenda for the next Session.
2. Item VI would be amended to read as follows:

"Notwithstanding the provisions of Article XXX of the General Agreement on Tariffs and Trade, the modifications of the General Agreement on Tariffs and Trade provided for in Items I through V, inclusive, of this Protocol shall become effective, as among contracting parties to the Agreement, on this \_\_\_\_\_ day of March, 1948."

3. A new paragraph would be added reading as follows:

"Signature of this Protocol by any government which is not at the time a contracting party to the General Agreement on Tariffs and Trade shall serve to authenticate the texts of the modifications of the General Agreement provided for in this Protocol. This Protocol shall remain open for signature by any such government, named in the second paragraph of the preamble to this Protocol, until May 1, 1948."

Mr. HAKIM (Lebanon), referring to the first of the three proposals put to the meeting by Mr. Leddy, felt that paragraph 6 of Article XXIX should be included in the proposed Protocol. The work done at Geneva had been carried out in preparation for the United Nations Conference on Trade and Employment; therefore, the General Agreement was subsidiary to the Charter and the Contracting Parties should all become members of the ITO and be bound

/by its Charter.

by its Charter. On grounds of principle, he urged that the paragraph be included in the Protocol.

Mr. ROYER (France) supported the views of the delegate of Lebanon. There should be no conflict between the terms of the Charter and those of the General Agreement. However, there were certain difficulties in inserting paragraph 6 of Article XXIX in the Protocol because certain delegations required time to consider the question. He suggested the matter should be left for consideration at the Second Session of the Contracting Parties.

Mr. ADARKAR (India) also supported the views of the delegate of Lebanon. Every possibility of conflict between the Charter and the General Agreement should be eliminated.

Mr. SAWWAF (Syria) could not accept deletion of paragraph 6 of Article XXIX for the reasons given by previous speakers.

Mr. LEDDY (United States of America) put forward the view that if non-urgent matters were to be dealt with at the First Session, it might be difficult to finish the work on time. Only emergency proposals should be considered.

Mr. SHACKLE (United Kingdom) supported the first proposal made by the United States, due to reasons of convenience and to the need to give further consideration to the matter.

Mr. SPEKONBRINK (Netherlands) felt nothing should be included in the Protocol that was not of an emergency character.

Mr. ADARKAR (India) stated this was a complex matter which should be left for later study, provided it was understood that consideration of all relevant parts of the problem was postponed. This would require deletion of the second sentence of paragraph 3 of Item IV of the Protocol (page 9 of GATT/1/21). He further suggested the insertion in paragraph 2 of Item IV of references to Article I of the Agreement.

Mr. LEDDY (United States of America) was in agreement with Mr. Adarkar.

The CHAIRMAN suggested that the Secretariat should circulate as soon as possible a new draft of Article XXIX as amended.

Mr. LEDDY (United States of America) explained that the date contained in his third proposal met the position of delegations which required a little time before signing the Protocol.

Mr. HOLLOWAY (South Africa) felt that the proposed text would meet the case of his delegation.

Mr. SEACKLE (United Kingdom) suggested that the word "through" in the second United States proposal should be deleted and replaced by the word "to".

Mr. COOMBS (Australia) inquired why it was necessary for signature of the Protocol to take place at the end of the United Nations Conference on Trade and Employment.

/Mr. LEDDY

Mr. LEDDY (United States of America) replied that non-participants in the Geneva negotiations should know what would be the final contents of the General Agreement before signing the Final Act at Havana, because the Charter contained commitments in respect of the Agreement.

Mr. COOMBS (Australia) wanted to know whether this explanation accounted for the entire contents of the Protocol.

The CHAIRMAN stated that only provisions of an emergency nature were being included, in accordance with a decision taken at a previous meeting.

Mr. COOMBS (Australia) was not clear on the change proposed in respect of Article 42 of the Charter. Was signature in this connection required by the end of the Trade Conference?

Mr. ROYER (France), in reply, reiterated the substance of statements he had made previously concerning the proposed Franco-Italian customs union.

Mr. LEDDY (United States of America) felt that all due assistance should be extended in respect of Italo-French plans. The support of his Government was, naturally, subject to agreement being attained on the text of Articles 23 and 42 of the Charter.

The CHAIRMAN declared the second and third United States proposals agreed, subject to the small drafting amendment proposed by the United Kingdom representative. He then proposed that the Protocol starting on page 4 of document GATT/1/21 should be discussed paragraph by paragraph.

Paragraphs 1, 2 and 3 were agreed without any change.

Item I was then considered.

Mr. COOMBS (Australia) wanted confirmation that the reason for including the specific terms of Article 42 of the Charter instead of including a reference to this Article in the list contained under Item IV, was to facilitate the plans being made by the French and Italian Governments.

The reply of Mr. ROYER (France) was followed by Mr. SPEEKINBRINK (Netherlands), who pointed out that the text of Article 42 contained in GATT/1/21 was, of course, still provisional.

Mr. ROYER (France) suggested that the following paragraph should be added to the text of Article XXIV as proposed under Item I: "12. The Contracting Parties will reach agreement on the transfer to the ITO of their functions under Article XXIV."

Mr. LEDDY (United States of America) agreed that the question should be dealt with and wondered whether it would not be best to retain the substance of paragraph 2 (b) of Article XXIX of the Agreement, in some form.

The CHAIRMAN suggested that the Secretariat should include a provision covering this point in the clean text of the Protocol it would circulate.

Item I was then agreed.

/Item II

Item II.

Mr. JOHNSON (New Zealand) was not entirely satisfied with the provisions as drafted and, although recognizing that they had been agreed by a meeting of Heads of Delegations of the Trade Conference, felt they could well be looked at again.

Mr. LEDDY (United States of America) felt the text should be maintained without change.

Mr. JOHNSON (New Zealand) was concerned with the position between two Contracting Parties under this clause. If one Contracting Party were to withdraw m.f.n. treatment, the second Contracting Party should also be able to do so. Both Contracting Parties concerned should be placed on the same footing.

Mr. LEDDY (United States of America) felt the position was similar to that which could arise under Article 17 of the Charter.

Mr. GUTIERREZ (Cuba) pointed out that the text under consideration had been agreed by the Heads of Delegations of the Trade Conference.

Mr. SPEEKENBRINK (Netherlands) pointed out that the sub-committee whose report was under consideration had felt itself bound by the agreement reached by the Heads of Delegations of the Trade Conference and had, therefore, decided it could not alter the text.

Mr. JOHNSON (New Zealand) hoped that circumstances making this clause operative would not arise and did not press his point.

The CHAIRMAN then declared Item II agreed.

Mr. SPEEKENBRINK (Netherlands) reverted to paragraph 8 of the sub-committee report (page 2 of GATT/1/21), regarding paragraph 5 (a) of Article XXIV, dealt with under Item I of the Protocol, and the CHAIRMAN announced that the United States and French representatives were not yet ready to submit proposals in this connection.

After consideration of some minor points, the Chairman announced Item III was agreed and stated that Item IV would be dealt with a little later, when the Secretariat circulated a redraft. Consideration was then given to Item V.

Mr. LEDDY (United States of America) proposed a new alternative, additional to the two contained within square brackets in document GATT/1/21. This proposal for a new Article XXXV read as follows:

"This Agreement shall not apply as between any contracting party and any other contracting party if:

(a) the two contracting parties have not entered into tariff negotiations with each other, and

/(b) either

(b) either of the contracting parties at the time either becomes a contracting party, fails to agree that this Agreement shall be so applied."

The CHAIRMAN then announced that the meeting would be adjourned for dinner and would reconvene at 9.30 p.m.

The meeting reconvened at 9.45 p.m.

Mr. SHACKLE (United Kingdom) was not sure whether the United States text would permit a Contracting Party to refuse to negotiate with another Contracting Party.

Mr. LEDDY (United States of America) replying to a question by Mr. COOMBS (Australia), stated that if the unanimity requirement were amended in regard to accession, two-thirds of the Contracting Parties could oblige a Contracting Party to enter into a trade agreement with another country, without its consent. His Government, therefore, felt that it was necessary to have a safeguard such as that which was proposed.

Mr. SHACKLE (United Kingdom) pointed out that, under the United States proposal, a Contracting Party could refuse the benefits of the Agreement to another Contracting Party, given certain circumstances.

Mr. LEDDY (United States of America) stressed that his proposal prevented compulsion to enter into a tariff agreement.

Mr. COOMBS (Australia) was in favour of the first alternative contained in Item V of GATT/1/21, with the deletion of the words "...of Article II...".

Mr. ROYER (France) amended the Australian representative's proposal by adding "other than Article I" after "Agreement".

Mr. LEDDY (United States of America) said that his Government was interested in considering various approaches to the problem and wished all three alternatives to be studied fully.

Mr. COOMBS (Australia) stated that his objection to the United States draft answered mainly to reasons of presentation. He reiterated his preference for the first alternative, with the amendment he had proposed.

Mr. ROYER (France) did not feel any of the three alternatives was satisfactory.

Mr. LEDDY (United States of America) altered (b) of his proposed amendment by deleting the words "fails to agree that this Agreement shall be so applied" and replacing them by "does not consent to such application". He further proposed that the following words should be inserted at the beginning of his amendment "Without prejudice to the provisions of paragraph 5 (b) of Article XXV or to the obligations of a Contracting Party pursuant to paragraph 1 of Article XXIX,".

/Mr. ROWE

Mr. ROWE (Southern Rhodesia) inquired whether the United States amendment meant that his country would run the risk of having benefits withheld when it became a Contracting Party, although it had already negotiated with the Contracting Parties at Geneva.

Mr. LEDDY (United States of America) and Mr. ROYER (France) felt the position of Southern Rhodesia was covered by the draft.

Mr. LEDDY (United States of America) announced that the United States would only be able to give provisional application to the General Agreement until such time as the Charter was accepted by his Government.

The CHAIRMAN made it clear that the first words of Article XXXIII of the General Agreement referred to non-signatories of the Final Act at Geneva.

Mr. HAKIM (Lebanon) concurred with this view.

The CHAIRMAN proposed that Item V of the Protocol contained in document GATT/1/21 should be considered further immediately a clean text was distributed.

Mr. COOMBS (Australia) inquired why (b) was needed in the proposed new Article XXXIV submitted by the United States, in view of the terms of (a).

Mr. LEDDY (United States of America) stated that (b) was a qualification of (a).

The CHAIRMAN then proposed that the meeting should take up consideration of the Australian amendments proposed in document GATT/1/21/Add.1.

It was felt that the proposals contained in paragraphs 2 and 3 were covered elsewhere, and proposal was approved.

Mr. COOMBS (Australia) inquired whether the Australian amendment which had just been agreed created any inconsistency elsewhere in the text of the General Agreement, and it was suggested that the Secretariat should look into the question and report any such discrepancy, should it find one.

A working paper (Miscellaneous Job 6166) was then distributed, containing a redraft prepared by the Secretariat of the Protocol Modifying Certain General Provisions of the Agreement, contained in document GATT/1/21. Item IV of the Protocol was put to the meeting for consideration.

On the initiative of Mr. LEDDY (United States of America), it was agreed to insert in the first sentence of paragraph 2 after the word "suspended" the following words: "and paragraph 3 of Article 1 shall be subject to any consequential amendments".

Mr. LOPES-RODRIGUES (Brazil) wanted Articles 26, 27 and 28 of the Charter included in the list appearing in paragraph 2. His delegation attached the utmost importance to this matter.

Mr. SHACKLE (United Kingdom) felt that cases such as that which had been raised by the Brazilian delegate were provided for in paragraph 4 of Article XIII.

/Mr. LOPES-RODRIGUES

Mr. LOPES-RODRIGUES (Brazil) saw no good reason for refusing inclusion of the three Articles. If a good reason were brought forward, he would give way. The three Articles he had mentioned represented one of the few advantages of the Charter for Brazil, and he, therefore, felt they should be provided for in the text under discussion.

The CHAIRMAN pointed out that paragraph 2 of Item IV enumerated Articles of the Agreement and the corresponding Articles of the Charter. There was nothing in the Agreement which corresponded to Articles 26, 27 and 28 of the Charter.

Mr. LOPES-RODRIGUES (Brazil) did not feel this was sufficient reason not to agree to his request.

Mr. LEDDY (United States of America) suggested that the second sentence of paragraph 2 of Item IV be deleted. This would simplify the question. Retention might create invidious comparisons between various sets of Articles.

Mr. COOMBS (Australia) suggested that the matter raised by the Brazilian representative should be dealt with at a later time.

Messrs. HAKIM (Lebanon) and LAMSVELT (Netherlands) supported the proposal of the representative of the United States.

The second sentence of paragraph 2 of Item IV was deleted.

Mr. HAKIM (Lebanon) felt that a positive solution to the problem of the lack of conformity between the Agreement and the Charter when the latter came into force, should be found at the Second Session of the Contracting Parties.

#### Item V.

Messrs. COOMBS (Australia), LAMSVELT (Netherlands) and SHACKLE (United Kingdom) accepted the text of a new Article XXXV which had been proposed by the United States representative.

Mr. ROWE (Southern Rhodesia) inquired whether there was any difference under this text between the Contracting Parties and other signatories of the Final Act at Geneva.

Mr. LOPES-RODRIGUES (Brazil) supported this alternative but was not clear on the significance of the second part of (b).

On the proposal of Mr. ROYER (France) it was agreed that the last part of the introduction of the proposed new Article XXXV should read as follows: "...and any other Government becoming a Contracting Party pursuant to Article XXXIII and:".

Document GATT/1/21/Add.1, paragraph 2.

Mr. LEDDY (United States of America) proposed that the substance of 2 (b) of Article XXIX should be added to paragraph 2 of Item IV of the proposed

/Protocol

Protocol, in the following terms: "...and the Contracting Parties shall meet as soon as possible thereafter and agree concerning the transfer to the ITO of their functions under Article XXIV.

This was agreed.

Document GATT/1/21.

The CHAIRMAN then suggested consideration of the Protocol modifying Article XIV.

Paragraphs 1, 2 and 3 and Item I were agreed without any change.

On Item II, Mr. JOHNSON (New Zealand) suggested that the date should be changed to 30 June to conform with the Protocol of Provisional Application.

Mr. ROYER (France) pointed out there was no direct link between the two documents.

Mr. JOHNSON (New Zealand) said some countries might reach a decision on the signature of the Protocol of Provisional Application in the course of June 1948, in which case his point had validity.

Mr. SHACKLE (United Kingdom) was in favour of keeping the date of 1 June.

Mr. LEDDY (United States of America) suggested that the same formula as in the other Protocol should be followed, although the document would remain open for signature until 1 June.

Item II was then agreed as contained in the document under consideration.

It was agreed to redraft Item III as in the Protocol previously considered.

The entire Protocol was agreed as amended.

Mr. ADARKAR (India) reverted to the first Protocol and reopened the question of the drafting of the new Article XXIV. He felt the principle involved should be applicable as between signatories of the Final Act in Geneva.

Mr. ROWE (Southern Rhodesia) stated the proposal of the Indian representative was contrary to the agreement which had been reached earlier in the meeting.

The CHAIRMAN announced that the Secretariat would circulate clean texts of the two Protocols on Monday morning and representatives would then be able to cable their Governments for authorization to sign both instruments at an early date.

The meeting adjourned at midnight.

